IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/02/2006

CORAM

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

Contempt Petition No.84 of 2001

Ashok Leyland Finance Limited
represented by its duly constituted
Attorney Sri T.A.Rajagopalan
"Sudarsan Building"
86, Chamiers Road
Alwarpet, Madras - 600 018. .. Petitioner

-Vs-

1. Balaji Industrial Corporation Limited
No.9, Bazullah Road, T.Nagar
Chennai - 600 017

2. M.Srinivaslu Reddy
No.9, Bazullah Road, T.Nagar
Chennai - 600 017

3. Mr.B.Rajaram
Vice President Finance
Balaji Industrial Corporation Limited
No.9, Bazullah Road
T.Nagar, Chennai - 600 017. ... Respondents

PRAYER: Contempt Petition filed under Sections 10 and 12 of Contempt of Court Act praying to punish the second and third respondents for committing contempt of the order dated 10.12.1999 passed by this Court in Application NO.4103 of 1999.

!For petitioner : Mr.R.Thiagarajan, Sr.Counsel
for Mr.S.Srinviasa Raghavan
^For Respondents: Mr.R.Viduthalai,Sr.Counsel
for M/s.Rank Associates for
R1 and R3
Mrs.Sudha Ramalingam, counsel for proposed respondent

:O R D E R

The Contempt Petition filed is under Sections 10 and 12 of Contempt of Court Act praying to punish the second and third respondents for committing contempt of the order dated 10.12.1999 passed by this Court in Application

No.4103 of 1999.

2. The facts of the case in brief are as follows:

The petitioner, a non-banking financial institution, during the course of business, extended financial assistance to the first respondent Company for a sum of Rs.6,40,00,000/- for purchase of a composite industrial equipment known as "Steel Wire Rod Mills" under a hire purchase agreement dated 6.8.1997 and the said amount shall be repaid in 60 equal installments. As the respondent is not regular in repayment, the petitioner invoked Arbitration Clause in the hire purchase agreement by appointing an arbitrator to resolve the dispute. During the pendency of arbitration proceedings, the petitioner filed an application under Section 9 of the Arbitration and Conciliation Act for an interim measure to secure its interest. The petitioner also filed application No.4103 of 1999 for issue of a prohibitory order restraining the Andhra Pradesh State Beverages Corporation Limited, the garnishee, from paying any amounts lying with it to the respondent. This Court by order dated 26.11.1999 passed an interim prohibitory order as prayed for. The respondents filed application Nos.4239 and 4240 of 1999 for suspension and to vacate the prohibitory orders passed by the Court on 26.11.1999. During the course of hearing of the said applications, the second respondent filed an affidavit of undertaking on 9.12 .1999 agreeing to pay Rs.2 crores i.e., Rs.1 crore immediately by the garnishee and the balance of Rs.1 crore payable by the respondents within six weeks of the first payment and further undertook for rescheduling and adhere to the schedule of repayment in respect of future instalments. This Court by recording the affidavit of undertaking given by the respondent passed order dated 9.12.1999/10.12.1999 vacating the garnishee order dated 26.11.1999. Though the respondents made payment of Rs.2 crores as agreed, failed to pay the future instalments from July, 2000. Thus, the respondents have deliberately failed and neglected to comply with the undertaking given before this Court despite several requests made by the petitioner. Therefore, the second respondent as the Managing Director of the first respondent Company and the third respondent as the deponent of the affidavit of undertaking dated 9.12.1999 are liable to be punished for contempt of Court for willful disobedience of the undertaking given before this Court.

3. The third respondent as Vice President of the first respondent Company filed counter affidavit. The other respondents adopted the same. In the counter, they deny the material allegations made by the petitioner inter alia contending that the undertaking given by the respondent to pay the future instalments was only subject to the other conditions stated in the undertaking. The contempt application is not maintainable. The affidavit of undertaking itself contemplates default and provides possible remedy for the same. As per clause 4 of the undertaking, the parties were to arrive at an agreement regarding rescheduling of future installments. The petitioner has not complied with their part of obligation contained in the undertaking. The petitioner against the terms of undertaking has insisted on the continuance of the arbitration proceedings in an illegal and unlawful manner without withdrawing the same.

4. Mr.Thiagarajan, learned Senior Counsel appearing for the petitioner submits that this Court by recording the affidavit of undertaking of the third respondent passed an order on 10.12.1999. As per the terms of the undertaking, out of the amounts lying with the garnishee, the Andhra Pradesh state Beverages Corporation Limited, a sum of Rs.1 Crore has been paid. Apart from that, another sum of Rs.1 Crore has also been paid by the first respondent within the time stipulated as per the undertaking. But the respondents failed and neglected to meet the petitioner for arriving at an agreement regarding payment of balance amount by way of future instalments. Hence, the petitioner has deliberately and willfully disobeyed the undertaking given before this Court by way of a solemn affidavit and the order of this Court dated 10.12.1999 and thus, rendered themselves liable to be punished for contempt under Sections 10 and 12 of the Contempt of Court Act.

5. Per contra, Mr.Viduthalai, learned Senior Counsel appearing for the respondents submitted that the affidavit of undertaking has been accepted by the petitioner and as per clauses 2 and 3, the payment of Rs.1 Crore from the garnishee has been paid and another sum of Rs.1 Crore has been paid by the respondents. However, the petitioner failed to withdraw the arbitration proceedings as per Clause No.5 and thus the breach has been committed by the petitioner and not by the respondents. In view of the non-compliance of clause No.5 of the affidavit of undertaking by the petitioner, it was not possible for the parties to meet and arrive at an agreement regarding the re-scheduling of the balance amount. Learned Senior Counsel also contended that after the proceedings, in the year 2002, the first respondent Company became sick and it is before the BIFR seeking for scheme for revival. There is absolutely no intention on the part of the respondents to disobey either the affidavit of undertaking or the order passed by this Court. Because of the breach of undertaking by the petitioner and the subsequent event of the

Company becoming sick and before the BIFR for revival, the meeting of the parties could not take place as per clause 4 of the undertaking and thus sought for purging the respondents from contempt.

6. I heard the argument of the learned Senior Counsel appearing on either side and perused the material on record.

7. A reading of the affidavit of undertaking, which is annexed at page No.34 of the typed set of papers, would make it clear that the parties i.e., the petitioner and the respondents agreed to the terms to the effect that out of the amounts lying with the Andhra Pradesh State Beverages Corporation Limited, the garnishee, a sum of Rs.1 Crore has to be paid to the petitioner. It is accepted by the either parties that this condition has been complied with. The second condition is that the first respondent would make payment of a further sum of Rs.1 Crore within six weeks from the date of payment of Rs.1 Crore referred to above. It is admitted by the parties that this condition has also been complied with.

8. There are two other conditions as clauses 4 and 5 incorporated in the affidavit of undertaking to the effect that the petitioner and the first

and second respondents shall meet and arrive at an agreement regarding re-scheduling of future instalments for payment of balance and the first and second respondents should pay the future installments as per the re-schedule. In the event that no agreement could be arrived at within the said period, the first and second respondents should pay the future instalment payments as per the original schedule of payments. The last of the condition in the affidavit of undertaking was that on payment of the amount referred to in clauses 2 and 3, the petitioner would withdraw the proceedings and future performance of hire purchase agreement would be as per the affidavit of undertaking in clause (4).

9. The cause of the petitioner in filing the contempt application is that clause No.4 i.e., arriving at an agreement regarding rescheduling of future payments, has not been complied with by the respondents and in that event, it has to be construed that no agreement was arrived at between the parties with regard to the future instalments. In such contingency, the second limb of Clause 4 has to be followed i.e., the respondents have to make the future instalments as per the original schedule of payment, which they failed to do.

10. It is the case of the respondents herein that though the condition has been stated as clause No.4, the serial Number would not be material. On complying with the first two conditions of making payment of Rs.1 Crore from out of the amount lying with the garnishee, and the further amount of Rs.1 Crore by the respondent, Clause No.5 come into operation and the petitioner has to withdraw the proceedings and on such withdrawal, the future performance of the hire purchase agreement would be as per the clause (4).

11. It is contended by the learned Senior Counsel appearing for the petitioner that the proceedings referred to in clause No.5 of the undertaking is Section 9(1) application taken out by the petitioner under the Arbitration and Conciliation Act and not the arbitration proceedings pending before the Arbitrator. On the other hand, it was contended by the respondents that the proceedings referred to in clause (5) is only the arbitration proceedings and not the Section 9(1) application.

12. On a conjoint reading of the affidavit of undertaking, I am of the view that the argument advanced on behalf of the petitioner cannot be accepted and the proceedings referred to in clause No.5 are only the proceedings pending before the arbitrator i.e., the arbitration proceedings for the following reasons. Clause No.4 provides that the petitioner, first and second respondents should meet and arrive at an agreement regarding re-scheduling of future instalments and pay the balance amount accordingly. In the event that no agreement was arrived at within the said period, the first and second respondents should pay the future instalment payments thereafter as per the original schedule of payments. The conspectus of the clause is that after deducting the Rs.2 Crores paid by the respondents, in respect of the balance amount, a re-scheduling has to be arrived at between the parties. If such re-schedule is arrived at, the respondents have to pay the instalments as per the re-schedule. In default, the respondents have to

make payment of balance amount as per the original schedule of payment. If the clause is given effect to, there remains nothing for the arbitrator to adjudicate further in the proceedings before him. Hence, the proceedings referred to under clause (5) is referable only to the arbitration proceedings and not the application filed under section 9(1) of the Arbitration and Conciliation Act as the said application was disposed of on recording the affidavit of undertaking. Clause (5) provides that on payment of the amounts referred to in clauses (2) and (3) above, the petitioner would withdraw the proceedings and future performance of the hire purchase agreement would be as per the affidavit of undertaking in clause 4. Here again, I will have to accept the contention of the learned counsel appearing for the respondents that on payment of the amount referred to in clauses 2 and 3 i.e., Rs.1 Crore from out of the amount lying with the garnishee and payment of further sum of Rs.1 Crore by the respondents within six weeks therefrom, the petitioner agreed to withdraw the proceedings i.e., the arbitration proceedings and further performance of the hire purchase agreement would be as per the affidavit of undertaking contained in clause 4.

13. What would happen after withdrawal of proceedings before the Arbitrator if the respondents have not agreed to pay as per the clause 4 is not a question to be decided by this Court in these proceedings. The question in this case is whether the respondents have willfully and deliberately flouted the undertaking given before this Court and flouted the order which recorded the undertakin g. Looked in the above said angle, I am of the view that the petitioner has also breached the undertaking, which was agreed, as evidenced from the order dated 1 0.12.1999, in the sense, the petitioner breached clause No.5 of the affidavit in not having the arbitral proceedings withdrawn. The breach on the part of the petitioner and the subsequent event of the first respondent Company become sick and before the BIFR, which fact has not been disputed by the petitioner weigh in favour of the respondents in coming to the conclusion that the act of the respondents is not deliberate and willful disobedience of the order of this Court.

14. Learned Senior Counsel appearing for the petitioner submitted that this Court can pass appropriate orders in contempt proceedings to close the breach. For that purpose, he relied on the decisions of the Supreme Court in the case of MOHAMMAD IDRIS AND ANOTHER VS. RUSTAN JEHANGIR BAPUJI AND OTHERS reported in AIR 1984 SUPREME COURT 1826 and NOORALI BABUL THANEWALA VS. K.M.M.SHETTY AND OTHERS reported in (199 0) 1 SCC 259 and a Full Bench Judgment of this Court in the case of CENTURY FLOUR MILLS LTD. VS. S.SUPPIAH AND OTHERS reported in AIR 1975 MADRAS 270. As the act of the respondents cannot be regarded as willful and deliberate disobedience of the order of this Court, these judgments would not advance the case of the petitioner. Further, it is clear from the attitude of the parties that they are still ready to settle the dispute, which is manifest from their conduct on the following facts that on earlier occasion, when the matter was adjourned, this Court orally suggested the respondents to make certain payment to the petitioner. On 14.2.2006, when the matter is taken up for hearing, the respondents paid a sum of RS.10 lakhs, which factum has been accepted by the petitioner. Likewise, during the course of the argument, the learned Senior Counsel appearing for the petitioner has also expressed the petitioner's gesture in

reducing the amount. When such being the mood of the parties, it is well open to them, if they are so advised, to proceed further.

15. The learned Senior Counsel also placed reliance on a judgment of the Supreme Court in the case of DELHI DEVELOPMENT AUTHORITY VS. SKIPPER CONSTRUCTION COMPANY PRIVATE LIMITED AND ANOTHER reported in AIR 1996 SUPREME COURT 2005 to contend that the technical objections raised by the respondents should be overruled. It is a case, which has been decided by the Supreme Court with reference to Articles 129 and 1 42 of the Constitution of India and Section 12 of the Contempt of Court Act. The principle that a contemner ought not to be permitted to enjoy and/or keep the fruits of contempt has been pointed out in that case. He also relied on the decisions of this Court in the case of V.VERONICKAMMAL VS. THE DIRECTOR OF SCHOOL EDUCATION, COLLEGE ROAD, MADRAS AND OTHERS reported in 1997-2-LAW WEEKLY 538 and VIDYA CHARAN SHUKLA VS. TAMIL NADU OLYMPIC ASSOCIATION AND ANOTHER reported in AIR 1991 MADRAS 323 to contend that breach of undertaking amounts to contempt.
16. As already stated that the petitioner has also committed breach, and the breach attributed against the respondents is not willful and deliberate so as to construe the conduct of the respondents to obstruct the course of justice or brings into disrepute the institution of judiciary and also it is the well established legal principle that the invocation of the contempt proceedings should not be exercised in casually or lightly but with great care and circumspection and only in such cases where it is necessary to punish the contemner in order to uphold the majesty of law and the dignity of the Courts. In the facts and circumstances of the case, I am of the view that the respondents cannot be regarded as deliberately and willfully breached the undertaking and the order passed pursuant thereof. Hence, the contempt petition is dismissed.

Index:Yes
Internet: Yes